



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 05/14/02

AGENDA ITEM 6

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Use Permit No. 2001-0366 – Jack-in-the-Box (Mahesh Gogri – Franchise Operator/Applicant) – Toro Development Co. (Owner) – Request to Amend Use Permit 84-164 to Expand Hours of Drive-Through to 24 Hours/Daily – The Property is Located at 31005 Mission Boulevard, Southwest Corner of Mission Boulevard and Rousseau Street, Within a CN (Neighborhood Commercial) District

RECOMMENDATION:

It is recommended that the City Council find the project categorically exempt from CEQA and deny the application for a 24-hour operation.

DISCUSSION:

The Jack-In-The-Box restaurant in the Fairway Park Shopping Center was approved by the City Council in 1984 on appeal. At the time the appellant objected to the drive-in based on anticipated increase in noise, foot traffic, litter, crime and late hours of operation. The City Council denied the appeal, limited the hours of operation and required City Council action on changes to the hours. Specifically, Condition 10 states that *"Hours of operation shall be from 6 a.m. to 10 p.m. Sunday through Thursday and 6 a.m. to midnight on Friday and Saturday. Any change in hours of operation shall be approved in advance by the City Council."*

In September of 2000, the franchisee applied for amendment of the use permit to allow 24-hour operation of the drive-through window. The City Council denied the request for the 24-hour operation of the drive-through window but modified the business hours to 6 a.m. to 11 p.m. on weekdays and 6 a.m. to 1 a.m. on weekends, which are consistent with the hours of operation for other commercial endeavors that abut residential areas.

The applicant and current operator of the restaurant indicates that when he purchased the restaurant he was unaware of the condition limiting the hours of operation. In his previous application in 2000, he stated that not only had he operated the business on a 24-hour basis, but also the previous owner had operated it in that manner for 5 years.

The applicant indicates that staying open on a 24-hour basis will provide a good service for customers driving in the area between 11 p.m. and 6 a.m. who will be able to purchase food at these late hours. This includes people driving in the late evening or early morning hours who need coffee or other beverages to ward off drowsiness. The owner has posted signs on the property that asks customers to keep the volumes on their car stereos low, and since the time that Council previously reviewed the matter of the hours of operation, the Planning Division has not received complaints from neighboring residents regarding noise. The Police Department reports

36 calls for service to the Jack-in-the-Box address since September 2000, although it is not known if any of these calls relate to noise.

The Zoning Ordinance has Performance Standards for drive-in restaurants which include standards for operating hours. The Performance Standards state that "Drive-in uses *shall be operated in a manner which does not interfere with the normal use of adjoining properties.*" Included in these standards are:

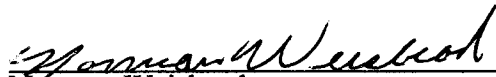
- (a) Hours of operation, including deliveries to the site, shall be compatible with the needs and character of the surrounding neighborhood. For purposes of this section, the usual operating hours shall be considered to be between 6:30 a.m. and 11:00 p.m. on weekdays and 7:00 a.m. and 1:00 a.m. on weekends.

Staff received two letters expressing concern regarding 24-hour operation of the drive-through window. One letter was from William Weller, Director of the Fairway Park Neighborhood Association. He said that the neighborhood east of Mission Boulevard would be heavily impacted by extended hours of the drive-through. A letter was received from a resident on Chicoine Avenue. She said she would support the majority of responses from the immediate neighborhood since they would have a greater impact from a 24-hour operation. If the extended hours are supported, she recommends adding a condition requiring cleaning up the par course on a daily basis by owners of Jack in the Box restaurant. An e-mail in opposition to the expanded hours was received from a resident in the area who did not identify their address. It states that Fairway Park has become a "hang-out" for kids who may not even live in the area. They do not feel the center is a safe place to visit at times during evening hours. No one in the immediately adjacent residential area commented on the proposal.

A letter was also received from Toro Development Company, owners of the shopping center. They believe having a business open 24 hours provides a deterrent to vandalism and theft in the center. The drive-up window faces the shopping center and customers exiting the drive-through must exit into the shopping center. They also feel that there is a need for this service for people driving in the area between 11 p.m. and 6 a.m. especially those who work late shifts and may eat at unusual hours.

Staff sees no justification for permitting 24-hour operation of the drive-through window. There have been no changes in the surrounding area since the previous request in September of 2000 that would lessen the potential noise impact to the surrounding neighborhood. Except for the letter from the owner of the shopping center, staff has received no correspondence or calls in support of expanding the hours of the drive-through window. Staff is also not aware of any other fast food restaurant in Hayward with a permitted 24-hour drive-through window near a residential district, and expanding the hours could set a precedent. However, if the City Council decides to approve the request for a 24-hour drive-through window and subsequently it comes to the attention of the Planning Director that a nuisance is being created as a result of the extended hours, the use permit can be brought back for reconsideration of the hours of operation.

Prepared by:



Norman Weisbrod

Consulting Project Planner

Recommended by:



Sylvia Ehrenthal

Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Attachments: Exhibit A - E-mail message in opposition to 24-hour operation,
dated April 1, 2002

Exhibit B - Letter in opposition, dated March 29, 2002

Exhibit C - Letter in opposition, dated March 23, 2002

Exhibit D - Letter in support from Toro Development Co., dated March 22,
2002

Exhibit E - Area Map

Exhibit F - Site Plan

5/9/02

Norman Weisbrod

From: Patsy & Dan Greenough [pzgpanda@pacbell.net]
Sent: Monday, April 01, 2002 5:51 PM
To: Norman Weisbrod
Subject: Fairway Park Shopping Center Jack in the Box

To Whom it May Concern;

This note is in regard to the Jack-in-the-Box restaurant at the Fairway Park Shopping Center.

We do not wish to have their current hours of the Jack-In-The-Box operation extended. Fairway Park has become a "hang-out" for kids who probably don't even live in our area. There is constant noise in addition to the automobile noises such as screeching and braking. This shopping center does not feel like a safe place to visit after evening at times.

Please do not change the current hours.

Thank you.

Dan and Patsy Greenough

March 29, 2002

Norman Weisbrod, Consulting Project Planner
City of Hayward
Re: Jack-in-the-Box request to extend hours of operation

Dear Norman Weisbrod,

Thank you for the opportunity to respond to a request from the owners of Jack-in-the-Box at the Fairway Park Shopping Center. At this time, I am willing to support the majority of responses from the immediate neighborhood as they have a greater direct impact from a 24-hour operation. Should the residents argue against the extended hours of operation, then I support their requests. However, if they do support the extended hours of operation, I am going to request that a **"condition of approval"** be considered at the time of applicants request. The condition is that the owners of Jack-n-the-Box be required to clean up the par-course weekly and sometimes daily, depending on the condition. Our community sometimes experiences an inordinate amount of trash & litter on a regular basis. We have community volunteers, one in particular, who pick up the trash on a weekly, sometimes daily basis in addition to the city workers doing it on Wednesdays. Clearly we know that not all trash originates from Jack-in-the-Box but know that most trash originates from all the fast food operations located at the shopping center. We are willing to compromise by having Jack-in-the-Box accept it's fair share of responsibility which amounts to two/three days a week.

I'm sure that the owners might feel uncomfortable with this condition, but its time that business owners accept their responsibility for a better community. Trash on the par course creates an ugly and uninviting environment for the community. It is interesting, but since the operation has not been operating 24 hours, trash from that operation has been reduced on the par course, but don't get me wrong, it still exists.

We are often reminded that the 2AM to 5AM patrons are people that frequently cause problems in our neighborhood. We are currently experiencing a very high level of gang activity during those AM hours. They are loitering, graffitiing, drug dealing, drag racing (wheelies), and are ones who invariably throw their trash out the car window. I usually pick up Jack-in-the-Box trash on two particular streets (against the hillside) on a weekly basis. Therefore, an annual review should take place if other conditions arise.

Seeing how store owners cannot police the whole neighborhood, we are willing to focus their efforts on the par course primarily. Neighbors currently cleaning the par course weekly, sometimes daily, are getting very tired of trash and desperately need a break. We also know city costs are increased due to their own trash pick-up once a week, and we believe that fast food restaurant should pay an annual fair share litter clean-up cost. Many of us do not believe that our city tax dollars should continually go to clean-up costs from fast food restaurants when the money could be better spent. Perhaps, it's time that our City Council take a look at a citywide special tax applied to all fast food restaurants as other cities have previously adopted. We all know how trash/litter visually affect our streets and parks and it's probably time that a conservative approach be considered.

Many of us participate in an annual clean up day with the Audubon Society focusing in on the Creek/flood control channel along Industrial Blvd. You would be truly amazed at amount of fast-food trash that ends up in the creek. Trash/litter contributes to poor water quality and increases costs with the Alameda County Flood Control also.

In closing, I would strongly urge you, our Mayor and City Council, take an aggressive approach to this ever burdening environmental challenge. The physical attractiveness of our neighborhoods degrades when it is overwhelmed with trash and littler on our city streets and parks.

Thank you kindly


Holly Z. Rogers
31730 Chicoine Ave. Hayward, CA 94544 (510) 487-4461

23 MARCH, 2002

PLANNING DIVISION
777 "B" ST.
HAYWARD, CALIF., 94541

FROM: WILLIAM WELLER

DIRECTOR: FAIRWAY PARK NEIGHBORHOODS ASSOC.

SEVERAL ITEMS

- ① REQUEST BY "JACK-IN-A-BOX" TO EXTEND HOURS.
VOTE, "NO." THIS WAS A COMPROMISE AND CONCLUSION BETWEEN THE CITY COUNCIL AND THE OWNERS. THE NEIGHBORS EAST OF MISSION WERE HEAVILY IMPACTED, NO WAY.
- ② SHELL GAS STATION AT GISSELL AND MISSION :-
a. THEIR GAS PRICES ARE HIGHER THAN COMPETORS AND THEREFORE LESS BUSINESS
b. REPAINTING & REMODELING WILL NOT HELP. WE ARE AGAINST BIGGER, BRIGHTER SIGNS IN THIS BEDROOM DISTRICT.
- ③ STREET TREE PRUNING: WE STRUGGLED WITH OUR SECOND "MODESTO ASH" FOR YEARS: BROKEN AND UPHEAVED SIDE WALK, CURB, GUTTER, AND STREET. WE HAD TO HAVE OUR SEWER LINE "ROOTED" AND REPLACED. THEN "DAVEY TREE" HALF TOPPED IT AND QUIT WORK @ 3⁵⁰ PM. FRIDAY, NEVER TO RETURN, HAYWARD HAS TOO MANY TOO LARGE UNSIGHTLY TREES.

Toro Development Co.

31123 MISSION BOULEVARD
HAYWARD, CALIFORNIA 94544-7697
TELEPHONE (510) 487-0400
FACSIMILE (510) 487-0404

EXHIBIT D

MAR 25 2002

PLANNING DIVISION

March 22, 2002

Mr. Norman Weisbrod
Consulting Project Planner
City of Hayward
777 B Street
Hayward, CA 94541-5007

Re: **Jack-in-the-Box Restaurant**
Fairway Park Shopping Center

Dear Mr. Weisbrod:

We are the owners of Fairway Park Shopping Center, and maintain our offices at the shopping center.

This concerns the Jack-in-the-Box request to operate their drive-thru window 24 hours a day. We fully support this proposal.

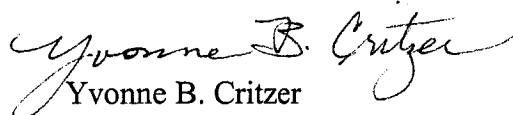
We believe that having a merchant open 24 hours provides a deterrent to any potential vandal / thief / trouble maker who might think twice before doing a criminal act in our shopping center, as that person might fear being seen by a Jack-in-the-Box employee or customer. Please note that the drive-up window faces the shopping center and customers' vehicles are obliged to exit into our shopping center.

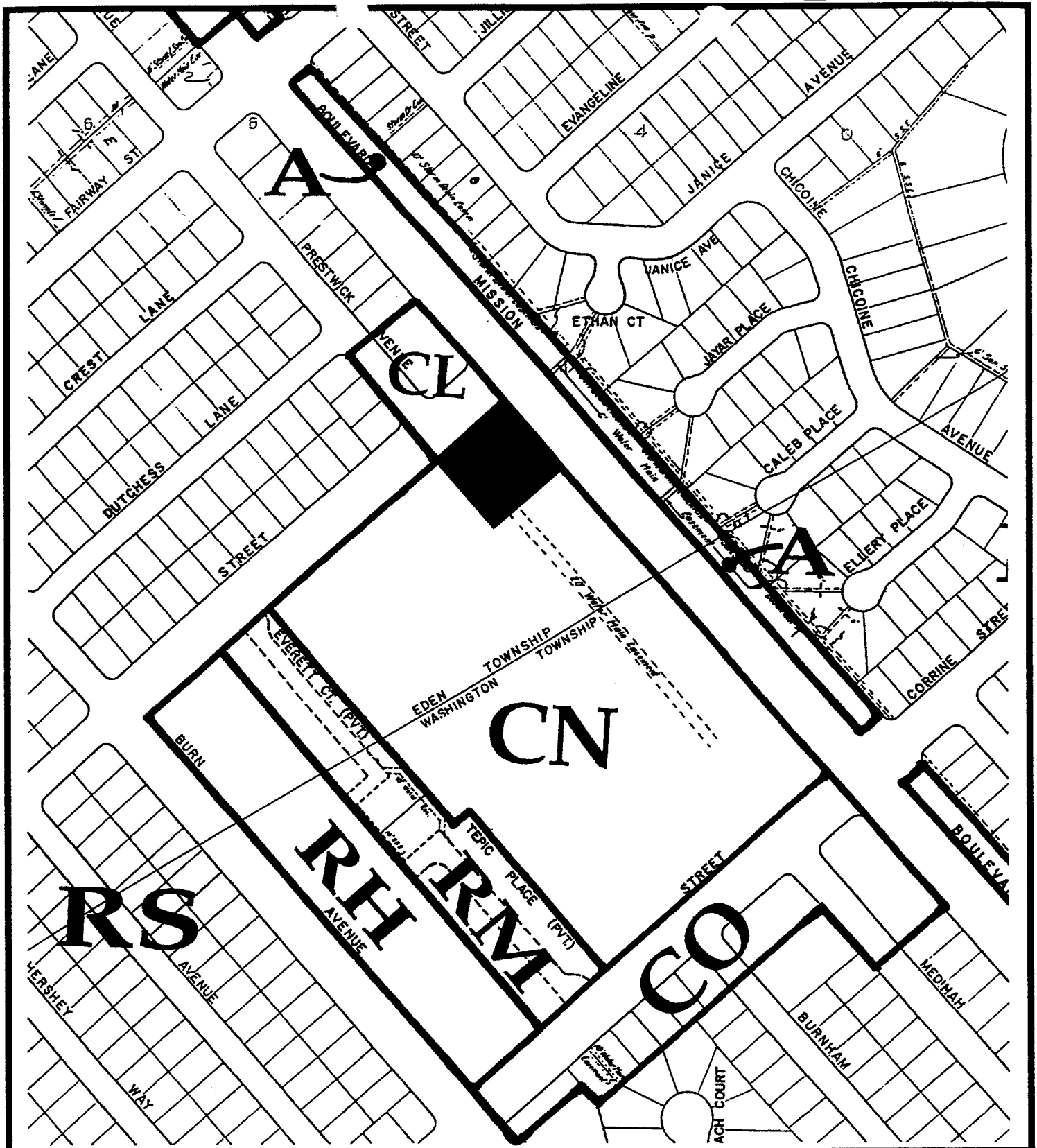
Further, we feel there is a need for this service for people driving in our area between 11 PM and 6 AM. Many people work shifts other than the traditional 9 AM to 5 PM and consequently may eat at unusual hours.

Sometimes people driving in the late evening or early morning need coffee or other beverage to ward off drowsiness.

The owners of subject Jack-in-the-Box have been good, conscientious and considerate merchants here for many years. We hope the City will look favorably on their request.

Sincerely,


Yvonne B. Critzer



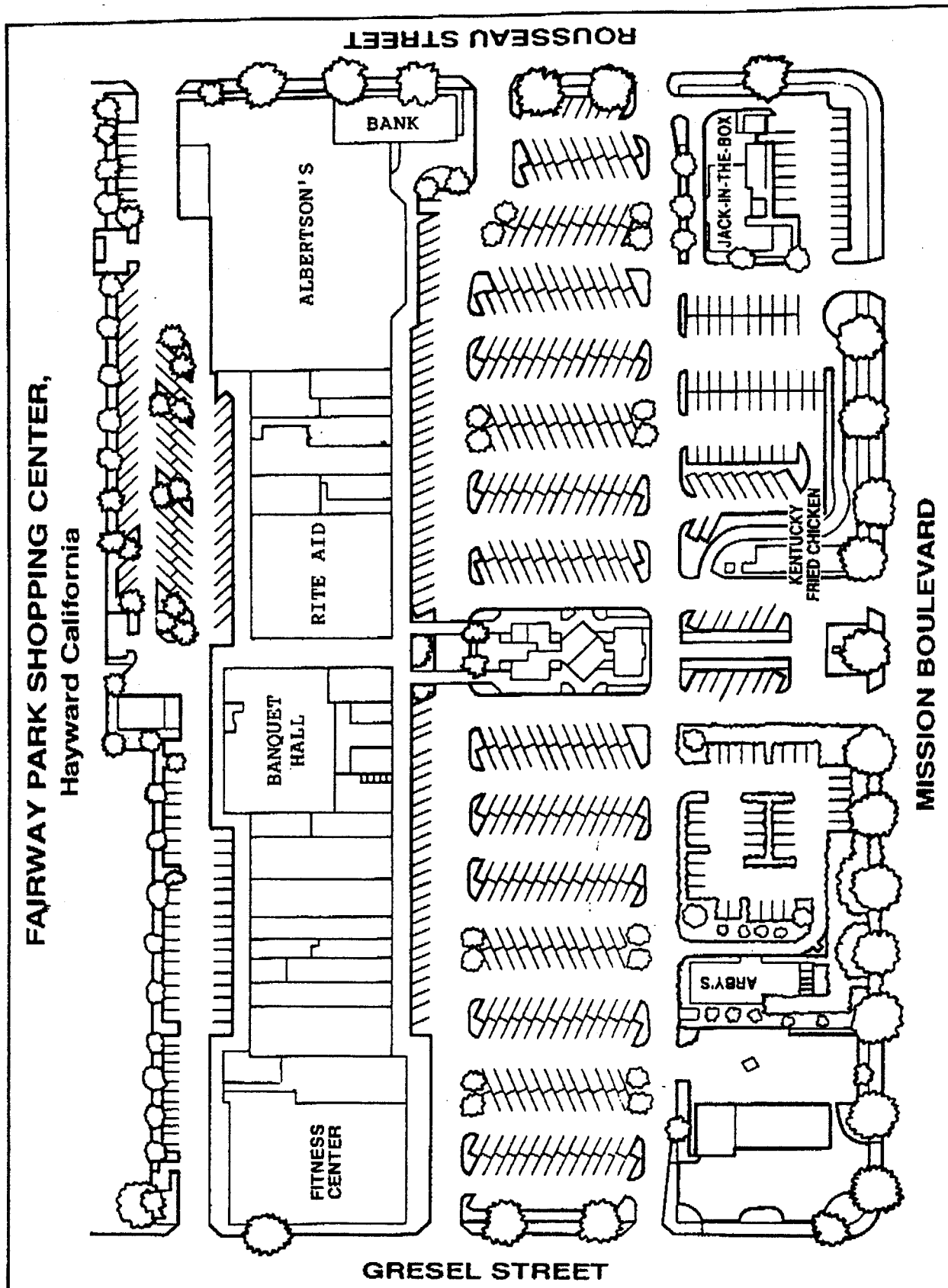
Area & Zoning Map

PL-2001-0366 UP

Address: 31005 Mission Boulevard

Applicant: Gogri Mahesh

Owner: Toro Development Company



Findings for Denial

Use Permit Application. 2001-0366

Jack-in-the-Box Restaurant

Mahesh Gogri – Franchise Operator (Applicant)

Toro Development Co. (Owner):

31005 Mission Boulevard

Request to amend Use Permit 84-164 to expand hours of drive-through lane to 24 hours/daily

- a. That the City Council find that the Categorical Exemption is complete and final in accordance with the California Environmental Quality Act Guidelines and reflects the independent judgment of the City Council based on the fact that the project conforms to Section 15301, (Existing Facilities) of the CEQA Guidelines.
- b. The proposed use is not desirable for the public convenience or welfare in that the use of the drive-through window during the late night and early morning hours may attract motorists who not infrequently play their car radios too loudly which disturbs the adjacent residents. Even though signs have been posted on the property asking customers to turn down their radios, they may not do this until they have seen the sign or may disregard the sign. The neighbors are also disturbed by the noise from customers' cars driving past their homes to gain access to the drive-through lane.
- c. The proposed extension of operating hours of the drive-through window will impair the character and integrity of the zoning district and surrounding area by not providing an effective means to enforce noise abatement of idling vehicles in the drive-through lane;
- d. The allowance to extend the hours of the drive-through lane beyond 11:00 p.m. on weekdays and 1 a.m. on weekends will be detrimental to the general welfare of the neighborhood in that the noise from vehicles traveling to the drive-up lanes, idling cars and those who disregard the signs and play loud music within the drive-through lane will impact adjacent residential properties;
- e. The proposed hours of operation of the drive-through lane is not in harmony with applicable City policies and the intent and purposes of the zoning district involved since the intent of requiring a use permit for drive-in restaurants is to assure compatibility of the use with the surrounding area and this assurance has not been provided. The area surrounding the restaurant is predominantly residential and any noise from cars idling or from car radios late at night and in the early morning hours will be detrimental to neighboring residential properties.

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION DENYING USE PERMIT APPLICATION
NO.2001-0366, CONCERNING A REQUEST FOR 24-HOUR
OPERATION OF THE DRIVE-THROUGH WINDOW AT
JACK-IN-THE-BOX LOCATED AT 31005 MISSION
BOULEVARD**

WHEREAS, Use Permit Application No. 2001-0366, concerns a request by Mahesh Gogri -Franchise Operator/Applicant, to amend Use Permit 84-164, to allow 24-hour operation of the drive-through window. at Jack-in-the-Box located at 31005 Mission Boulevard on the southwest corner of Mission Boulevard and Rousseau Street within a CN (Neighborhood Commercial) District; and

WHEREAS, The City Council of the City of Hayward conditionally approved the Jack-in-the-Box restaurant on appeal in 1984, limiting the hours of operation from 6 a.m. to 10 p.m. Sunday through Thursday and 6 a.m. to midnight on Friday and Saturday and any requests for changes in the hours of operation shall be approved in advance by the City Council; and

WHEREAS, staff finds that the project is categorically exempt from CEQA; and

WHEREAS, staff received numerous letters from neighboring residents opposing the extended hours of operation and sees no justification for permitting 24-hour operation of the drive-through window.

WHEREAS, the City Council of the City of Hayward hereby finds and determines as follows:

1. That the City Council find that the Categorical Exemption is complete and final in accordance with the California Environmental Quality Act Guidelines and reflect the independent judgment of the City Council based on the fact that the project conforms to Section 15301, (Existing Facilities) of the CEQA Guidelines;
2. The proposed use is not desirable for the public convenience or welfare in that the use of the drive-through window during the late night and early morning hours may attract motorists who not infrequently play their car radios too loudly which disturbs the adjacent residents. Even though signs have been posted on

the property asking customers to turn down their radios, they may not do this until they have seen the sign or may disregard the sign. The neighbors are also disturbed by the noise from customers' cars driving past their homes to gain access to the drive-through lane;

3. The proposed extension of operating hours of the drive-through window will impair the character and integrity of the zoning district and surrounding area by not providing an effective means to enforce noise abatement of idling vehicles in the drive-through lane;
4. The allowance to extend the hours of the drive-through lane beyond 11:00 p.m. on weekdays and 1 a.m. on weekends will be detrimental to the general welfare of the neighborhood in that the noise from vehicles traveling to the drive-up lanes, idling cars and those who disregard the signs and play loud music within the drive-through lane will impact adjacent residential properties;
5. The proposed hours of operation of the drive-through lane is not in harmony with applicable City policies and the intent and purposes of the zoning district involved since the intent of requiring a use permit for drive-in restaurants is to assure compatibility of the use with the surrounding area and this assurance has not been provided. The area surrounding the restaurant is predominantly residential and any noise from cars idling or from car radios late at night and in the early morning hours will be detrimental to neighboring residential properties.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that, based upon the aforementioned finding, Use Permit Application No. 2001-0366, regarding a request to modify Use Permit Application No. 00-84-1164, is hereby denied, upholding the Planning Commission's Action.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward